IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-04-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA

WRIT PETITION NO.18245 OF 2003

V. Saravana Selvakumar
S/o.V.M.Velu .. Petitioner

Vs.

1. State of Tamilnadu,
rep. by its Secretary to
Government, Department of
Local Administration,
Fort St. George, Chennai 9.

2. The Commissioner,
Corporation of Madurai,
Madurai 2. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the 2nd respondent relating to his order passed in his letter No.SZ6/Est187/2002 dated 30.12.2002, quash the same and direct him to pay the bill for the 37 borewell works done by the petitioner in South Zone of Madurai Corporation area without any deduction towards fine or tender deposit along with 24% interest per annum on the bill amount due to the petitioner for all the 59 borewell works done by the petitioner from the date of completion of work till date of realisation.

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For Petitioner : Mr.C.Thanaseelan

For Respondent-1 : Mr.S.Gomathynayagam
Special Govt. Pleader

For Respondent-2 : Mr.P.Srinivas

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J U D G M E N T

Petitioner has filed this writ petition for quashing the order passed by the second respondent dated 30.12.2002 and for a direction to pay the bill for 37 borewell works without any deduction towards fine or tender deposit along with 24% interest per annum on the bill amount due to the petitioner for all the 59 borewell works done from the date of completion of work till date of realisation.

2. The facts may be noticed in brief :-

Petitioner is a registered contractor who has undertaken certain works under the Corporation of Madurai, Respondent No.2. According to the case of the petitioner, the work relating to 59 borewells had been entrusted to him. The work essentially consists of two parts, namely, civil work of drilling borewells and constructing its bed and platform for fixing the storage tank. The other portion of the work is fitting work, such as erection of submersible motor pumpset and fitting of GI pipe and electrical and wiring work for the motor pumpset. Materials for the latter type of work are to be supplied by the Corporation. It is asserted by the petitioner that the civil work of drilling 40 borewells in South Zone was completed by 20.10.2002 and similarly civil work of drilling 5 borewells in East Zone was completed on 15.10.2002. However, the fitting work could not be undertaken as the second respondent has not supplied the materials till 30.11.2002. Out of 14 other borewells in South Zone, there was objection and obstruction from the public as a result of which deviation order was issued in respect of 10 borewells for shifting the place of work. Such deviation order was issued on 20.11.2002 and, therefore, two months period should be counted from 20.11.2002. In respect of 4 remaining borewells, the second respondent did not take any steps for removal of the obstructions / hindrances. The details relating to those 4 borewells are as follows :-

BORE WELL WORK - 1) SZ.6/Est.113/02
NATURE OF OBSTRUCTION:

High tension electricity line passed over the place, so the Compressor engine vehicle could not be taken there.

Bore well work - 2) SZ.6Est.157/02
Nature of Obstruction :

This place fells in Central Market Area. The place was not cleared for months together.
Bore well work - 3) SZ.6Est.187/02

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Nature of Obstruction :

A lorry load of granite stones and bars have been stored in that place by the Corporation of Madurai. The 2nd respondent did not clear it for more than 3 months.
Bore well work – 4) SZ.6Est.230/02

Nature of Obstruction :

After completion of initial drilling works a neighbour had drawn electricity supply line over that place. This was not cleared for very long time."

Since the Corporation officials had not taken any steps to supply the materials, the petitioner had made two separate representations on 30.10.2002 to the second respondent and other officials which were followed by telegrams dated 6.11.2002 and 16.11.2002. Subsequently, when the petitioner came to know that the materials were available at the Corporation storeroom, he took immediate steps to obtain the materials and the fitting work was completed. While the matter stood thus, on 16.1.2003, the petitioner received a letter dated 30.12.2002 wherein it was indicated that the petitioner had not commenced the work for 5 borewells and the contract in respect of those borewells was cancelled. The communication further indicated that the name of the petitioner was removed from the list of contractors and included in the blacklist of contractors. It is the specific assertion of the petitioner that such letter dated 30.12.2002 was served only on 16.1.2003, by which date the petitioner had already completed the work for all the 5 borewells mentioned in the letter. It is the further case of the petitioner that the second respondent and other subordinate officials had already taken measurement for 59 works, however, the preparation of bills and payment had been long delayed. The petitioner sent a telegram dated 29.1.2003 to the Deputy Superintendent of Police stating that payment of bribe was expected with respect to preparation and payment of bills. After such telegram was issued, the second respondent got further intricated and thereafter he had started imposing fine (deduction of amount) from the bills without any rhyme or reason. It is further submitted by the petitioner that he had sent telegrams to different authorities for settlement of the bills. In the aforesaid background, the petitioner has prayed for quashing the impugned letter dated 30.12.2002 and for a further direction to the second respondent to refund of the fine amount deducted in 21 bills and to pay the bill amount for the other works.

3. During pendency of the writ petition by order dated 23.7.2003, a learned single Judge of this Court, while granting time to the second respondent to file counter, had observed :

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" In the meantime, the second respondent Corporation is directed to settle the dues to the petitioner, if any."

4. No counter has been filed on behalf of the respondents.

5. In course of hearing, learned counsel for the petitioner has submitted that during pendency of the writ petitioner, the petitioner has been paid for all the works except three works relating to Est.Nos.187, 228 and 230, which were covered under deviation work. It has been further submitted that Respondent No.2 has without any justification deducted heavy amounts ranging from Rs.5400 to Rs.100/- towards so called fine on the allegation that the petitioner had not completed the work in time. It is further submitted that the security deposit has not been refunded. In the aforesaid background, the present grievance of the petitioner is to the effect that a direction should be issued to refund the security deposit, refund the amount illegally deducted towards fine and also to quash the proceedings dated 30.12.2002 blacklisting the petitioner. As already indicated, no counter has been filed on behalf of the respondent Corporation.

6. So far as blacklisting is concerned, the law is well settled that before blacklisting a contractor, principles of natural justice are required to be followed. In AIR 1975 SC 266 (M/s. ERUSIAN EQUIPMENT AND CHEMICALS LTD., v. STATE OF WEST BENGAL AND ANOTHER), it was observed:-

"12. Under Article 298 of the Constitution the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

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15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

...

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

7. Judged in the light of the aforesaid principle, there is no escape from the conclusion that the order dated 30.12.2002 blacklisting the petitioner is without jurisdiction as before passing such order the principles of natural justice have not been followed. No counter has been filed on behalf of the respondents explaining the circumstances under which such order has been passed. In such view of the matter, such order is liable to be quashed.

8. So far as the prayer relating to payment of bills and refund of the amount deducted is concerned, in normal course, such claim being a money claim, the Court would ordinarily desist from deciding such matters. However, in the present case, such matter is inextricably connected to the order of blacklisting and as such the matter has come to court. Since no counter affidavit has been filed explaining the situation, the allegations made by the petitioner can be accepted as correct. The basic assertion of the petitioner that the impugned order, even though it was dated 30.12.2002, was posted much later and was served on the petitioner only on 16.1.2003 is not denied and is fortified by materials on record. Similarly the allegation that the letter dated 23.12.2002 had not been served is also not denied. In the absence of any denial, I am constrained to accept the allegations made by the petitioner and it is apparent that the petitioner has completed the work even before service of the so called cancellation order. Therefore, the petitioner is entitled to get the amount for the works done by him. Similarly, no justification has been shown by Respondent No.2 regarding deduction of certain amounts towards fine. In the absence of any justification, Respondent No.2 was not entitled to deduct those amounts and such amounts are also liable to be refunded.

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9. For the aforesaid reasons, the impugned order dated 30.12.2002 is quashed and Respondent No.2 is directed to refund the amount deducted towards fine and security deposit and pay the amount payable for three works relating to Est.Nos.187, 228 and 230. This may be done within a period of eight weeks from the date of receipt of the present order. The writ petition is accordingly allowed to the extent indicated above. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government of Tamilnadu,
   Department of Local Administration,
   Fort St. George, Chennai 9.

2. The Commissioner,
   Corporation of Madurai,
   Madurai 2.

+ one cc to Mr.C.Thanaseelan, Advocate Sr.No.18856.

AKM (CO)
RSM/21.4.2006

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